

Memorandum of Decision: 04-20221096
Gross Retail Tax
for the Year 2021

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Indiana Engineering Company met its burden of establishing that it was entitled to an additional refund of sales tax paid on the purchase of electricity; Engineering Company provided supplemental and legible documentation not originally available to the Department.

ISSUE

I. Gross Retail and Use Tax - Exempt Utilities.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-5.1; *Ind. Dept of State Revenue v. Food Marketing Corp.*, 403 N.E.2d 1093 (Ind. Ct. App. 1980); [45 IAC 2.2-4-13](#).

Taxpayer argues that the Department erred in denying a portion of its original sales tax refund request.

STATEMENT OF FACTS

Taxpayer is an engineering and manufacturing company. Taxpayer operates a facility in Indiana, other states, and throughout the world.

Taxpayer submitted a sales tax refund request of approximately \$6,000 paid on the purchase of exempt electric utilities. The refund request was submitted by means of the Indiana Department of Revenue's ("Department") form GA-110L. The refund was requested on the ground that the electricity measured through a specific meter was used for exempt purposes.

After reviewing the request, the Department granted a refund of approximately \$5,650 but denied the remaining \$350. In a letter dated December 16, 2021, the Department explained the reason for denying the \$350.

The October and November 2021 invoices provided for [utility company] Indiana meter [number] are not legible and cannot be reviewed and verified. Therefore, the refund for claim [number] has been readjusted.

Taxpayer did not agree with the decision and submitted a protest to that effect. Taxpayer's representative argued that it could now provide legible copies of the October and November 2021 invoices.

In its protest letter, Taxpayer asked that a decision be issued without the benefit of an administrative hearing. This Memorandum of Decision ("MOD") results.

I. Gross Retail and Use Tax - Exempt Electric Utilities.

DISCUSSION

This MOD addresses one - and only one - question. Has Taxpayer now provided the specific documentation which formed the basis for the Department's original decision denying the \$350 refund as explained in the December 16 letter?

Sales tax is imposed by IC § 6-2.5-2-1, which states in relevant part:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except

as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall . . . collect the tax as agent for the state.

An exemption from sales and use tax is provided for tangible personal property purchased for use in direct production of other tangible personal property. This exemption is found in IC § 6-2.5-5-5.1, which states in relevant part:

- (a) As used in this section, "tangible personal property" *includes electrical energy, natural or artificial gas, water, steam, and steam heat.*
- (b) Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. This exemption includes transactions involving acquisitions of tangible personal property used in commercial printing. (*Emphasis added*).

In the case of electrical usage, [45 IAC 2.2-4-13](#) explains:

- (a) In general, the furnishing of electricity, gas, water, steam, or steam heating services by public utilities to consumer is subject to tax.
- (b) The gross receipt of every person engaged as a power subsidiary or a public utility derived from selling electrical energy, gas, water, or steam to consumers for direct use in direct manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, horticulture, or another public utility or power subsidiary described in [IC 6-2.5-4-5](#) shall not constitute gross retail income of a retail merchant received from a retail transaction. Electrical energy, gas, water, or steam will only be considered directly used in direct production, manufacturing, mining, refining, oil or mineral extraction, irrigation, agriculture, or horticulture if the utilities would be exempt under [IC 6-2.5-5-5.1](#).
- (c) Sales of public utility services or commodities to consumers engaged in manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, horticulture, or another public utility or power subsidiary described in [IC 6-2.5-4-5](#), based on a single meter charge, flat rate charge, or other charge, are excepted if such services are separately metered or billed and will be used predominantly for the excepted purposes.
- (d) Sales of public utility services and commodities to consumers engaged in manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, or horticulture, based on a single meter charge, flat rate charge, or other charge, which will be used for both excepted and nonexcepted purposes are taxable unless such services and commodities are used predominantly for excepted purposes.
- (e) Where public utility services are sold from a single meter and the services or commodities are utilized for both exempt and nonexempt uses, the entire gross receipts will be subject to tax unless the services or commodities are used predominantly for excepted purposes. Predominant use shall mean that more than fifty percent (50[percent]) of the utility services and commodities are consumed for excepted uses.

Tax exemptions "narrowly construed." *Ind. Dep't of State Revenue v. Food Marketing Corp.*, 403 N.E.2d 1093, 1098 (Ind. Ct. App. 1980) (Staton, J. dissenting). However, in this case, the Department agrees that Taxpayer has provided clear and legible copies of the two invoices stipulated in the Department's original decision denying the \$350 refund amount. To the extent that the Department's refund denial was based on the finding that "[t]he October and November 2021 invoices provided for [utility company] Indiana meter [number] are not legible and cannot be reviewed and verified," Taxpayer's protest is sustained.

This Memorandum of Decision does not address any issues other than the reason stated for the refund denial in the Department's December 16, 2021, letter.

FINDING

To the extent specified in this Memorandum of Decision, Taxpayer's protest is sustained.

July 29, 2022

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